



State of California • Natural Resources Agency

DEPARTMENT OF PARKS AND RECREATION  
Off-Highway Motor Vehicle Recreation Division  
1725 23<sup>rd</sup> Street, Suite 200  
Sacramento, California 95816

Edmund G. Brown Jr., *Governor*

Major General Anthony L. Jackson, USMC (Ret.), *Director*

May 6, 2013

Bureau of Land Management  
Director (210)  
Attn: Brenda Williams  
P.O. Box 66538  
Washington, D.C. 20035

**Subject:** Protest of the BLM Hollister Field Office, Clear Creek Management Area Proposed Resource Management Plan/Final Environmental Impact Statement.

**Protesting Entity:**

California Department of Parks and Recreation, OHMVR Division  
1725 23<sup>rd</sup> Street, Suite 200  
Sacramento, CA 95816

Dear Ms. Williams,

The Off-Highway Motor Vehicle Recreation (OHMVR) Division has had an opportunity to review the March 2013 Clear Creek Management Area (CCMA) Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS). The Proposed RMP/Final EIS provides direction for managing public lands in the CCMA, which is managed by the Hollister Field Office of the Bureau of Land Management (BLM). Thank you for consideration of the OHMVR Division's comments submitted April 19, 2010 on the Draft RMP/ EIS (see Attachment 1).

The OHMVR Division also appreciated the BLM's willingness to defer finalizing the Proposed RMP until an independent study of asbestos exposure risk could be completed and evaluated. That study, entitled "Preliminary Analysis of the Asbestos Exposures Associated with Motorcycle Riding and Hiking in the Clear Creek Management Area (CCMA), San Benito County, California," prepared by scientists with expertise in asbestos related risk assessment from the International Environmental Research Foundation (IERF), among others, was released March 8, 2011. The CCMA Proposed RMP/Final EIS cites both the IERF study and the 2008 U.S. Environmental Protection Agency (EPA) asbestos exposure study as illustrative of the need for further research to determine effective strategies to reduce risk to CCMA visitors. It thus identifies adaptive management criteria, which if triggered, would cause BLM to reassess CCMA RMP land use decisions and potentially increase motorized use in the Serpentine Area of Critical Environmental Concern (ACEC). It is the OHMVR Division's position that the data and strategies already exist supporting restoring motorized recreation opportunity within the Serpentine ACEC beyond the very limited access proposed in the RMP. The OHMVR Division is thus

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submitting this letter to protest approval of the Proposed RMP/Final EIS, consistent with Title 43, Section 1610.5-2 of the Code of Federal Regulations (CFR).

### **Statement of Interest**

As declared by the California Legislature in the Off-Highway Motor Vehicle Recreation Act of 2003, effectively managed areas and adequate facilities for the use of off-highway vehicles (OHVs) and conservation and enforcement are essential for ecologically balanced recreation. The OHMVR Program, as managed by the OHMVR Division, exists specifically to provide sustainable and responsible access for OHV recreation in California. This mandate is further reflected in the OHMVR Division's Strategic Plan (2010). Strategic Plan Goal 1 calls for protecting, preserving, and enhancing existing OHV opportunities in a manner that ensures well managed, interesting, and high quality experiences, and addresses the environmental impacts that may be associated with those activities. Such a balanced approach has been well illustrated in the past at the CCMA, an area that has been awarded almost \$7 million in OHMVR grant funds for threatened and endangered species monitoring and protection, habitat restoration, soil conservation measures, education, public safety, and facility development. In contrast, the CCMA Proposed RMP simply calls for closing the entire 33,000 acre Serpentine ACEC to all OHV recreation and does not allow off-highway motorcycle recreation anywhere within the 63,000-acre CCMA. Prior to the temporary closure, over 35,000 OHV recreationists visited the Serpentine ACEC annually. This extreme restriction of access to a premier OHV recreation area is directly adverse to the OHMVR Division's interest in the provision of OHV recreation and our longstanding partnership with the BLM to provide well-managed OHV recreation in the CCMA.

### **Issue 1. Study data already exist demonstrating effective strategies for reduction in personal exposure to asbestos from OHV recreation**

Proposed RMP/Final EIS section 2.5.3 Travel and Transportation Management includes three adaptive management criteria, any of which would trigger BLM reinitiating travel management planning in the Serpentine ACEC. The first criterion is "Activity based studies that establish effective strategies for reduction in personal exposure to asbestos from off-highway vehicle recreation." Although the 2011 IERF study is acknowledged, along with comments from/rebuttals to the U.S. EPA and the California Department of Toxic Substance Control, the Proposed RMP fails to recognize that effective strategies for reducing exposure to asbestos have indeed been identified. As was stated in the OHMVR Division's April 2010 comments, the EPA Health Risk Assessment did not evaluate how to lower risk with mitigated management measures; the subsequent IERF study does. And notwithstanding consideration of strategies for reducing asbestos exposure described in some alternatives, e.g., Alternative B includes season of use restrictions, the Proposed RMP dismisses such strategies. Given that the 2011 IERF study demonstrated that moist soil conditions (and not solely active rain) and educating motorcycle riders about avoiding dust plumes can reduce asbestos exposure, per its own adaptive management criteria, BLM should reconsider travel management plans proposed for the CCMA.

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**Issue 2. The BLM failed to consider trail width reduction or other viable alternatives to allow OHV recreation in the Serpentine ACEC**

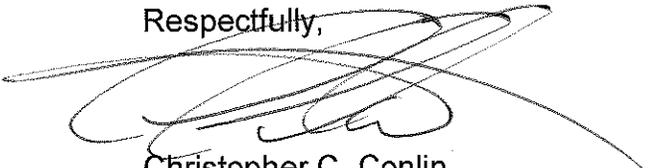
The OHMVR Division listed other management strategies for consideration, such as reduced trail widths, in its April 2010 comments, but they have not been evaluated in the proposed RMP. Finally, no attempt has been made to evaluate whether further restrictions on the number of annual visits would allow motorcycle recreation to be conducted safely in the Serpentine ACEC. The single track OHV trails in the Serpentine ACEC are unique. Trails of similar technical interest and challenge in such a spectacular setting are incredibly rare and cannot readily be replaced.

**Statement of the Parts of the Plan Being Protested:**

1. Section ES-6, page 8. Adaptive Management Criteria
2. Section 2.3.2, page 44. Summary of PRMP
3. Section 2.3.3.1, page 48. Limited Area Designation
4. Section 2.5, page 105. Description of the PRMP

Given the OHMVR Division's partnership with the BLM in the CCMA and throughout California, and our experience with managing diverse ecosystems, we fully appreciate the complexities of the issues presented when managing such a unique area. The OHMVR Division looks forward to working cooperatively with the BLM to reopening the CCMA to all forms of OHV recreation while ensuring protection of human health and sensitive resources.

Respectfully,



Christopher C. Conlin  
Deputy Director

Attachment

cc: Major General Anthony L. Jackson, USMC (Ret) Director



April 19, 2010

Bureau of Land Management  
Attn. CCMA RMP/EIS,  
Hollister Field Office  
20 Hamilton Court  
Hollister, CA 95023

**RE: CCMA Draft RMP/EIS**

Dear Bureau of Land Management,

The Off-Highway Motor Vehicle Recreation Division (Division) is pleased to provide the following comments on the Clear Creek Management Area Draft Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS). The Division hopes these comments assist the Bureau of Land Management (BLM) in fulfilling its mission "to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."

**Scope of the Draft RMP/EIS**

The Division is concerned by the basic scope of the Draft RMP/EIS. As stated in its Introduction, the Draft RMP/EIS is a "stand alone" document designed exclusively to guide the management of the Clear Creek Management Area (CCMA). Alternatively, the Hollister Field Office Resource Management Plan (Hollister RMP) (2007) provides for management by BLM's Hollister Field Office of the remaining areas beyond the bounds of CCMA. Thus, the BLM presents a mutually exclusive situation in which management actions proposed in the Draft RMP/EIS are limited solely to the CCMA, independent of the surrounding area.

Accordingly, the Division is concerned all relevant alternatives and other impacts are not thoroughly addressed within the Draft RMP/EIS. In particular, the Draft RMP/EIS offers no consideration to viable options or substitutes for the CCMA recreational opportunities. Instead, the establishment of new OHV recreation areas outside the CCMA is relegated to the Section 1.3.3 – "Issues Considered but Not Further Analyzed" (page 8). The subsequent suggestion in the Draft RMP/EIS (page 9) that the Hollister Field Office and OHMVR Division work together at a later date to find additional OHV recreation areas elsewhere in the Hollister Field Office, while a welcome proposal, is seemingly counter to the scope of the document and not a satisfactory solution. In fact, the Hollister RMP offers no OHV recreational opportunity on par with the CCMA. Indeed, few areas in the country offer a OHV experience like that provided at CCMA. The Division believes it essential for the BLM to examine every possibility before this important OHV recreation area is permanently lost.

### **Regarding the "Purpose and Need" of the Draft RMP/EIS**

The BLM asserts the need for the CCMA RMP/EIS arises from numerous changes in circumstances since the current land use plan decisions were adopted. As evidence, the BLM suggests the existing RMP and subsequent amendments do not address current public health and safety and resources protection issues in CCMA. However, the list of factors that illustrate the "Purpose and Need" for the RMP appear disingenuous:

- First, the BLM claims the May 2008 CCMA Asbestos Exposure and Human Health Risk Assessment (Health Risk Assessment) prepared by the United States Environmental Protection Agency (EPA) "provides significant new information that must be incorporated into a land use plan to evaluate the public health risk associated with BLM land use authorizations."
- Second, the BLM asserts the "current management plan does not specifically address listing and/or additional habitat needs for species protected under the federal 1973 Endangered Species Act (ESA), including the California condor, red-legged frog, and tiger salamander."
- Lastly, the BLM suggests "changes in social and economic conditions in San Benito County, the San Joaquin Valley, and the entire State of California have led to increased demand for use of public lands for recreation and energy production as well as an increased awareness and social value placed on the cultural and natural resources in the Planning Area."

Of the three items listed above, the first (asbestos) is clearly the driving force of the entire document. However, the significance and accuracy of the information presented in the Health Risk Assessment is subject to debate. The second item is irrelevant to the Draft RMP/EIS. The California condor does not exist within the CCMA and is only found to be "potentially present within the CCMA" (pg. 174). The red-legged frog is present fifteen miles or more downstream from the CCMA and has never been recorded in or near the CCMA (pg. 174). Further, the tiger salamander has "never been recorded in the environs of CCMA" (pg. 174). The third item, changes in socio-economic conditions, is poorly supported. The purported increase in demand and social awareness are not demonstrated in the discussion of the affected environment.

### **Uncertainties in EPA report**

The BLM actions are prompted predominantly by the EPA's Health Risk Assessment. The BLM believes the Health Risk Assessment "provides significant new information that must be incorporated into a land use plan to evaluate the public health risk associated with BLM land use authorizations."

However, the EPA report included substantial caveats regarding the accuracy and assumptions used to develop the report. The following items appear in the "Limitations of the Assessment":

- "... there are assumptions and variables that can cause the calculations to either overestimate or underestimate the actual risk."
- "The CCMA assessment may overestimate or underestimate risk if EPA's measurements of exposure and the assumptions of exposure frequency are either greater or less than actual conditions."
- "Additional uncertainty is introduced because both the IRIS and the OEHHA toxicity values for asbestos are based on epidemiological studies of work place exposures to intermittent high asbestos concentrations over extended periods. While the concentrations measured for activities at CCMA are significantly elevated, the exposure is infrequent and episodic."
- "Because there is no clear mode of action for asbestos-induced disease and no threshold for cancer health effects, using a direct time-weighted extrapolation from the longer, chronic occupational exposures to shorter-term, episodic exposures may underestimate or overestimate the risk."
- "The risks could be much lower because the exposures may be too infrequent or the total retained fiber burden too few to initiate the asbestos disease process."

Given the uncertain conclusions of the document, it seems inappropriate for BLM to rely on the document to guide substantial and controversial land management actions. Decisions based on such variable and imprecise studies should be cautiously and conservatively implemented, if at all. Instead, the preferred alternative reduces the acreage available within the Area of Critical Environmental Concern (ACEC) for OHV recreation to 1.5% of the area, defined as a "Scenic Route," and restricts use in the ACEC to single vehicle class during the day. Such a dramatic reduction of opportunity should only be recommended if the supporting documentation is considerably more definitive.

The Division believes serious questions have been raised about the Health Risk Assessment, such as identification and differentiation of chrysotile and amphibole asbestos, asbestos-related epidemiology, appropriateness of risk models, and activity based sampling methods. The Division contends further research and characterization of the potential hazard at the CCMA is warranted. Since the preferred alternative effectively closes the CCMA to OHV recreation, the Division finds it imperative the hazard risk be independently verified before a final decision is made.

### **Waiver of Liability and Indemnification of Risk**

A waiver of liability has been consistently proposed as an option to allow continued recreational use of the CCMA. However, BLM dismisses the concept of a waiver for recreational users of CCMA in the discussion of Section 4.2.6.2 Mitigation (page 352). In the BLM's view, "developing a waiver of liability, or establishing indemnification of risk, would have no beneficial impacts on public health and safety because neither approach would actually reduce exposure to airborne asbestos or improve overall protection of human health and the environment."

The Division disagrees with this assertion and contends a waiver should be considered as a practical option to mitigate the concerns of the BLM. The prospect of a waiver of liability should give a reasonable individual cause to consider participating in an activity at that location. On an individual basis, potential exposure to airborne asbestos may be reduced or avoided should a person opt not to enter the CCMA due to the waiver and potential hazards identified therein.

The waiver discussion in the Draft RMP/EIS continues, "... the potential for waivers of liability or indemnification of risk as 'stand-alone' mitigation measures for human health and safety do not satisfy the purpose and need for the CCMA RMP/EIS."

This statement is contrary to the stated purpose of the Draft RMP/EIS, which is to "establish goals, objectives, and management actions for BLM-administered lands in CCMA that address current issues, knowledge, and conditions." Requiring a waiver is undeniably a management action within the purview of BLM, and there is no obligation that it be implemented on a "stand alone" basis. Furthermore, BLM finds the waiver of liability to be an acceptable tool when used in conjunction with other management circumstances in the Draft RMP/EIS, including the preferred alternative. For example, requiring "... signed waivers of liability to indemnify BLM against risk of tort claims associated with CCMA visitor use and exposure to airborne asbestos fibers" is presented in the Management Actions Common to Alternatives B through G (page 41). A similar statement also appears in the presentation of the preferred alternative (page 86) and in the discussion of mitigation measures (page 351).

The Draft RMP/EIS further states, the action of providing waivers of liability or indemnification of risk as "stand-alone" mitigation measures, "would likely have major long-term adverse impacts on human health and the environment due to the perception that exposure to airborne asbestos fibers above the acceptable risk range established under the EPA Superfund Act is permissible and authorized by the Federal government."

This statement is entirely speculative in nature. The statement also contradicts Table 2.6-2, which presents a comparison of impacts to public health and safety and hazardous materials (page 100). Discussing HAZMAT Mitigation Measures, this table identifies "*moderate* (emphasis added) adverse effects from signed waivers of liability..." The justification for the different level of impact is unknown. Moreover, it is counterintuitive that a waiver disclosing potential risks would serve to lessen the public's perception of the risk.

**Alternative OHV Recreational Management Strategies Not Considered**

The EPA's Health Risk Assessment of CCMA demonstrated that risk regarding exposure to naturally occurring asbestos is present when different recreational activities are conducted at CCMA, including OHV recreation. The Health Risk Assessment did not evaluate how the risk might be lowered if mitigative management measures were implemented. Consequently, mitigative OHV management measures - short of eliminating OHV recreation at CCMA - were not truly given consideration from a risk analysis perspective. The Division believes there are many management strategies that could be implemented that could reduce asbestos exposure risk, such as seasonal operation of CCMA, trail re-routing and reducing trail widths, and limiting single-track trail use to motorcycles only. These and similar strategies should be evaluated from a health-based risk assessment perspective to determine if risk from potential asbestos exposure is reduced to a degree that is acceptable by BLM.

The Division is troubled by the ramifications of this proposed RMP/EIS and its adverse impacts to OHV recreation. As always, the Division is prepared to work closely with the BLM in developing alternatives which will lead to reopening the CCMA to continued OHV recreation.

Sincerely,



Daphne C. Greene  
Deputy Director  
OHMVR Division